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HOUSE BILL 1837

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State of Washington

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By Representatives Rodne, Lantz, McDonald, Moeller, Dickerson,  
Priest, Curtis, Morris, Woods, Shabro, Hasegawa, Kagi and Kenney

Read first time 02/08/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to child witnesses; and amending RCW 9A.44.150.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

3 **Sec. 1.** RCW 9A.44.150 and 1990 c 150 s 2 are each amended to read  
4 as follows:

5 (1) On motion of the prosecuting attorney in a criminal proceeding,  
6 the court may order that a child under the age of ten may testify in a  
7 room outside the presence of the defendant and the jury while one-way  
8 closed\_circuit television equipment simultaneously projects the child's  
9 testimony into another room so the defendant and the jury can watch and  
10 hear the child testify if:

11 (a) The testimony will:

12 (i) Describe an act or attempted act of sexual contact performed  
13 with or on the child witness by another ((or)) person or with or on a  
14 child other than the child witness by another person;

15 (ii) Describe an act or attempted act of physical abuse against the  
16 child witness by another person or against a child other than the child  
17 witness by another person; or

18 (iii) Describe a violent offense as defined by RCW 9.94A.030

1 committed against a person known by or familiar to the child witness or  
2 by a person known by or familiar to the child witness;

3 (b) The testimony is taken during the criminal proceeding;

4 (c) The court finds by substantial evidence, in a hearing conducted  
5 outside the presence of the jury, that requiring the child witness to  
6 testify in the presence of the defendant will cause the child to suffer  
7 serious emotional or mental distress that will prevent the child from  
8 reasonably communicating at the trial. If the defendant is excluded  
9 from the presence of the child, the jury must also be excluded;

10 (d) As provided in subsection (1)(a) and (b) of this section, the  
11 court may allow a child witness to testify in the presence of the  
12 defendant but outside the presence of the jury, via closed-circuit  
13 television, if the court finds, upon motion and hearing outside the  
14 presence of the jury, that the child will suffer serious emotional  
15 distress that will prevent the child from reasonably communicating at  
16 the trial in front of the jury, or, that although the child may be able  
17 to reasonably communicate at trial in front of the jury, the child will  
18 suffer serious emotional or mental distress from testifying in front of  
19 the jury. If the child is able to communicate in front of the  
20 defendant but not the jury the defendant will remain in the room with  
21 the child while the jury is excluded from the room;

22 (e) The court finds that the prosecutor has made all reasonable  
23 efforts to prepare the child witness for testifying, including  
24 informing the child or the child's parent or guardian about community  
25 counseling services, giving court tours, and explaining the trial  
26 process. If the prosecutor fails to demonstrate that preparations were  
27 implemented or the prosecutor in good faith attempted to implement  
28 them, the court shall deny the motion;

29 (f) The court balances the strength of the state's case without the  
30 testimony of the child witness against the defendant's constitutional  
31 rights and the degree of infringement of the closed-circuit television  
32 procedure on those rights;

33 (g) The court finds that no less restrictive method of obtaining  
34 the testimony exists that can adequately protect the child witness from  
35 the serious emotional or mental distress;

36 (h) When the court allows the child witness to testify outside the  
37 presence of the defendant, the defendant can communicate constantly

1 with the defense attorney by electronic transmission and be granted  
2 reasonable court recesses during the child's testimony for person-to-  
3 person consultation with the defense attorney;

4 (i) The court can communicate with the attorneys by an audio system  
5 so that the court can rule on objections and otherwise control the  
6 proceedings;

7 (j) All parties in the room with the child witness are on camera  
8 and can be viewed by all other parties. If viewing all participants is  
9 not possible, the court shall describe for the viewers the location of  
10 the prosecutor, defense attorney, and other participants in relation to  
11 the child;

12 (k) The court finds that the television equipment is capable of  
13 making an accurate reproduction and the operator of the equipment is  
14 competent to operate the equipment; and

15 (l) The court imposes reasonable guidelines upon the parties for  
16 conducting the filming to avoid trauma to the child witness or abuse of  
17 the procedure for tactical advantage.

18 The prosecutor, defense attorney, and a neutral and trained  
19 victim's advocate, if any, shall always be in the room where the child  
20 witness is testifying. The court in the court's discretion depending  
21 on the circumstances and whether the jury or defendant or both are  
22 excluded from the room where the child is testifying, may remain or may  
23 not remain in the room with the child.

24 (2) During the hearing conducted under subsection (1) of this  
25 section to determine whether the child witness may testify outside the  
26 presence of the defendant and/or the jury, the court may conduct the  
27 observation and examination of the child outside the presence of the  
28 defendant if:

29 (a) The prosecutor alleges and the court concurs that the child  
30 witness will be unable to testify in front of the defendant or will  
31 suffer severe emotional or mental distress if forced to testify in  
32 front of the defendant;

33 (b) The defendant can observe and hear the child witness by closed-  
34 circuit television;

35 (c) The defendant can communicate constantly with the defense  
36 attorney during the examination of the child witness by electronic  
37 transmission and be granted reasonable court recesses during the

1 child's examination for person-to-person consultation with the defense  
2 attorney; and

3 (d) The court finds the closed-circuit television is capable of  
4 making an accurate reproduction and the operator of the equipment is  
5 competent to operate the equipment. Whenever possible, all the parties  
6 in the room with the child witness shall be on camera so that the  
7 viewers can see all the parties. If viewing all participants is not  
8 possible, then the court shall describe for the viewers the location of  
9 the prosecutor, defense attorney, and other participants in relation to  
10 the child.

11 (3) The court shall make particularized findings on the record  
12 articulating the factors upon which the court based its decision to  
13 allow the child witness to testify via closed-circuit television  
14 pursuant to this section. The factors the court may consider include,  
15 but are not limited to, a consideration of the child's age, physical  
16 health, emotional stability, expressions by the child of fear of  
17 testifying in open court or in front of the defendant, the relationship  
18 of the defendant to the child, and the court's observations of the  
19 child's inability to reasonably communicate in front of the defendant  
20 or in open court. The court's findings shall identify the impact the  
21 factors have upon the child's ability to testify in front of the jury  
22 or the defendant or both and the specific nature of the emotional or  
23 mental trauma the child would suffer. The court shall determine  
24 whether the source of the trauma is the presence of the defendant, the  
25 jury, or both, and shall limit the use of the closed-circuit television  
26 accordingly.

27 (4) This section does not apply if the defendant is an attorney pro  
28 se unless the defendant has a court-appointed attorney assisting the  
29 defendant in the defense.

30 (5) This section may not preclude the presence of both the  
31 (~~victim~~) child witness and the defendant in the courtroom together  
32 for purposes of establishing or challenging the identification of the  
33 defendant when identification is a legitimate issue in the proceeding.

34 (6) The Washington supreme court may adopt rules of procedure  
35 regarding closed-circuit television procedures.

36 (7) All recorded tapes of testimony produced by closed-circuit  
37 television equipment shall be subject to any protective order of the  
38 court for the purpose of protecting the privacy of the child witness.

1 (8) Nothing in this section creates a right of the child witness to  
2 a closed-circuit television procedure in lieu of testifying in open  
3 court.

4 (9) The state shall bear the costs of the closed-circuit television  
5 procedure.

6 (10) A child witness may or may not be a victim in the proceeding.

7 (11) Nothing in this section precludes the court from allowing a  
8 child to testify outside the presence of the defendant and the jury,  
9 via closed-circuit television, under other circumstances the court  
10 deems appropriate.

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